



LAW OFFICE OF
DAVID A. LUDDER
A Professional Limited Liability Company



March 1, 2016

W.B. "Clay" Wadsworth
Gordon Town Attorney
Jacoby & Meyers
P.O. Box 5551
Dothan, Alabama 36302

Re: Notice of Intent to Sue Town of Gordon, Alabama under Clean Water Act

Dear Mr. Wadsworth:

Thank you for your letter dated February 24, 2016 responding to the January 16, 2016 notice of intent to sue the Town of Gordon, Alabama filed on behalf of the Environmental Defense Alliance.

As you are aware, Unilateral Order No. 15-081-WP issued by the Alabama Department of Environmental Management includes the following requirements:

B. The Permittee shall prepare and submit to the Department an Engineering Report that addresses the need for changes in maintenance and operating procedures, the potential for infiltration and inflow, the need for modification of existing treatment and collection system works, and the need for new or additional treatment and collection system works as necessary to achieve compliance with applicable rules and regulations and permit conditions. The Engineering Report must include a schedule for implementation (*i.e.*, a Compliance Plan) and cost of equipment and/or repairs needed to achieve compliance, if known. The Engineering Report must include a plan for continued maintenance and assessment of the collection system to minimize future infiltration and inflow. The Engineering Report must be prepared by a professional engineer licensed to practice in the State of Alabama. The Engineering Report shall be submitted so that it is received by the Department no later than ninety days after the date of issuance of this Order. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient, then the Permittee must modify the Engineering Report. The Department must receive modifications to the Engineering Report, if required, no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations provided in the Engineering Report not later than October 31, 2017.

The Compliance Plan submitted by the Town of Gordon on or about October 17, 2015 indicates that correction of excessive infiltration and inflow are contingent upon the Town receiving a Community Development Block Grant through the Southeast Regional Planning and Development Commission. The Compliance Plan fails to provide for correction of these problems if the grant is not received.


In addition, the Compliance Plan provides:

The Town ran a camera throughout a portion of the lines earlier this year. The camera has identified problem areas and *we are determining* exactly what will need to be done to correct these deficient areas. We have also located numerous areas where stub-outs have been broken and are allowing groundwater to enter the system. The Town is *currently locating* these areas also and correcting them as they are found. Floating aquatic vegetation has also been added to the final lagoon in an effort to reduce the growth of algae. After speaking with a representative from Allied Environmental, he has seen some improvements but thinks *the system will need additional measures* to help regulate the pH. The necessary corrective measures *will be included in the CDBG Grant application* in early 2016. We *anticipate* lift station rehabilitations, additional measures to limit algae growth *such as* the Aquashade, capping sanitary stubouts, and *possibly* lining of existing lines to prevent I & I.

(Emphasis added). It is apparent that the Town's engineer is merely speculating about possible causes of violations and has failed to fully investigate and identify the causes of violations and the corrective actions necessary to achieve compliance.

Given these flaws in the Town's Compliance Plan, the Town has not provided reasonable assurance that it will return to compliance with NPDES Permit No. AL0073202 by October 31, 2017. As I am sure you are aware, a citizen suit is not precluded by the issuance of an administrative order by the Alabama Department of Environmental Management. It can only be precluded by diligent prosecution of a civil or criminal action in court by the State or Administrator of the U.S. Environmental Protection Agency.

Sincerely,



David A. Ludder
Attorney for
Environmental Defense Alliance

cc:

Hon. Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. Heather McTeer Toney, Regional Administrator
U.S. Environmental Protection Agency-Region 4
Sam Nunn Atlanta Federal Center
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Atlanta, Georgia 30303-3104

Hon. Lance LeFleur, Director
Alabama Department of Environmental Management
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Hon. Robert Tambling, Assistant Attorney General
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